IN THE COURT OF APPEALS
STATE OF ARIZONA
DIVISION TWO

THE STATE OF ARIZONA, Appellee, v. KENYA ZANZIBAR TOUSSAINT, Appellant.	)	2 CA-CR 2007-0178 DEPARTMENT A MEMORANDUM DECISION Not for Publication Rule 111, Rules of the Supreme Court

APPEAL FROM THE SUPERIOR COURT OF PIMA COUNTY

Cause No. CR20063958

Honorable Barbara Sattler, Judge Pro Tempore

AFFIRMED

Terry Goddard, Arizona Attorney General
By Randall M. Howe and Amy M. Thorson
Tucson
Attorneys for Appellee

Robert J. Hirsh, Pima County Public Defender
By Dawn Priestman
Tucson
Attorneys for Appellant

H O W A R D, Presiding Judge.

¶1 After a jury trial, appellant Kenya Toussaint was convicted of one count of aggravated domestic violence. Toussaint claims the trial court abused its discretion by admitting certain prejudicial testimony. We conclude that any error was harmless beyond a reasonable doubt and therefore affirm Toussaint's conviction and sentence.

¶2 Toussaint argues the trial court erred by allowing into evidence a detective's testimony that a couple of days before trial he had told the victim she needed to appear in court, and he had seen the victim loading luggage into her car. He argues the testimony was irrelevant to any element of the charged offense and that it was unfairly prejudicial because it permitted the jury to speculate that the victim failed to appear because she was afraid of Toussaint. Assuming, without deciding, that the testimony was irrelevant, we will not reverse if any error was harmless. *See State v. Davolt*, 207 Ariz. 191, ¶ 64, 84 P.3d 456, 474 (2004). "Error . . . is harmless if we can say, beyond a reasonable doubt, that the error did not contribute to or affect the verdict." *State v. Bible*, 175 Ariz. 549, 588, 858 P.2d 1152, 1191 (1993). We may conclude that erroneously admitted evidence did not contribute to the verdict when "properly admitted" evidence of the defendant's guilt is overwhelming. *Davolt*, 207 Ariz. 191, ¶ 64, 84 P.3d at 474.

¶3 In this case, the basis for the charge of aggravated domestic violence was Toussaint's violation of an order of protection after having been convicted of two prior domestic violence offenses within the preceding sixty months. *See* A.R.S. § 13-3601.02(A), (F); *see also* A.R.S. §§ 13-3601, 13-2810(A)(2). The order of protection prohibited

Toussaint from going "on or near" the victim's residence. The state presented overwhelming evidence that Toussaint violated the order, including the testimony of a police officer who witnessed Toussaint cross the yard of the victim's residence, Toussaint's own post-arrest statements that he was aware of the order of protection and understood it, and uncontested documentary evidence establishing the prior convictions for domestic violence offenses within the relevant period. We therefore conclude that any error in admitting the testimony regarding the victim's absence at trial was harmless.

¶4 Based on the foregoing, we affirm Toussaint's conviction and sentence.

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JOSEPH W. HOWARD, Presiding Judge

CONCURRING:

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JOHN PELANDER, Chief Judge

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J. WILLIAM BRAMMER, JR., Judge